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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,827	01/11/2002	Sally Kay Swart	163.1386USU1	7890
23552	7590	10/15/2003	EXAMINER	
MERCHANT & GOULD PC			BECKER, DREW E	
P.O. BOX 2903			ART UNIT	PAPER NUMBER
MINNEAPOLIS, MN 55402-0903			1761	

DATE MAILED: 10/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/043,827	Applicant(s) SWART ET AL.	
	Examiner Drew E Becker	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 18-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>0302</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-17, drawn to a method of treating food, classified in class 426, subclass 240.
 - II. Claims 18-25, drawn to an apparatus, classified in class 422, subclass 516.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus of group II as claimed can be used to practice another and materially different process, for instance by using liquid smoke as the anti-microbial agent.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

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4. During a telephone conversation with Mark Skoog on September 29, 2003 a provisional election was made with traverse to prosecute the invention of group I, claims 1-17. Affirmation of this election must be made by applicant in replying to this Office action. Claims 18-25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 5-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claims 5-6 recite a "quantity of radiation/antimicrobial agent insufficient to acceptably reduce the microbial burden". It is not clear what level would be "acceptable" or "sufficient".

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-7 and 14-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Todd Jr [Pat. No. 6,099,879].

Todd Jr teaches a method of treating food by contacting it with an anti-microbial agent in the form of sodium tripolyphosphate (column 6, line 28), irradiating the food with gamma radiation or an electron beam (column 6, line 5), packaging the food before irradiation (column 8, line 66), washing the surface of the food with the anti-microbial agent (column 6, line 10), the food being meat, fish, or poultry (column 5, line 35), the anti-microbial agent and irradiation inherently possessing a synergistic effect, and the gamma radiation being produced by cobalt-60 (column 9, line 5).

11. Claims 1-7 and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Ottke et al [Pat. No. 3,057,735].

Todd Jr teaches a method of treating food by contacting it with an anti-microbial agent in the form of a phosphate (column 2, line 59), irradiating the food with gamma radiation (column 3, line 10), packaging the food before irradiation (column 6, line 26), washing

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the surface of the food with the anti-microbial agent (column 2, line 24), the food being meat and fish (column 1, line 11), the anti-microbial agent and irradiation inherently possessing a synergistic effect, and the gamma radiation being produced by cobalt-60 (column 3, line 11).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ottke et al as applied above, in view of Hilgren et al [Pat. No. 6,514,556].

Ottke et al teach the above mentioned concepts. Ottke et al do not teach peroxyacetic acid, peroxyoctanoic acid, or densified versions of each. Hilgren et al teach a method of treating food by applying peroxyacetic acid (column 6, line 7), peroxyoctanoic acid (column 6, line 9), and densified versions of each (column 9, lines 36-60). It would have been obvious to one of ordinary skill in the art to incorporate the compositions of Hilgren et al into the invention of Ottke et al since both are directed to methods of sanitizing food, since Ottke et al already teach the use of other anti-microbial agents (column 2, line 63), and since Hilgren et al teach effective antimicrobial agents such as peroxyacetic acid, peroxyoctanoic acid, and densified versions of each (column 6, lines 7-9; column 9, lines 36-60) were commonly applied to meat and fish.

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14. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd Jr as applied above, in view of JP 11339701A.

Todd Jr teaches the above mentioned concepts. Todd Jr does not teach the use of tungsten or single-sided irradiation. JP 11339701A teaches a method of irradiating food by the use of a tungsten filament (abstract) and single-sided irradiation (Figure 6). It would have been obvious to one of ordinary skill in the art to incorporate the irradiating method of JP 11339701A into the invention of Todd Jr since both are directed to methods of treating food, since Todd Jr already included irradiating the food with an electron beam (column 6, line 5), and since the single-sided, tungsten beam of JP 11339701A (abstract) would have effectively provided the beam of Todd Jr.

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shults [Pat. No. 3,592,658], Corlett et al [Pat. No. 3,401,044], Lee et al [Pat. No. 3,794,739], JP 62111669A, Terry [Pat. No. 6,551,641], and Gutzmann et al [Pat. No. 6,183,807] teach methods of treating food.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

A handwritten signature in black ink, appearing to read "Drew Becker", with a stylized flourish at the end.

Drew E Becker
Examiner
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